

ORIGINAL

IN THE SUPREME COURT OF OHIO

13 AP 044

IN RE DISQUALIFICATION

: Supreme Court Case No.: _____

OF RUEHLMAN

GARY PRUIETT, ET AL.

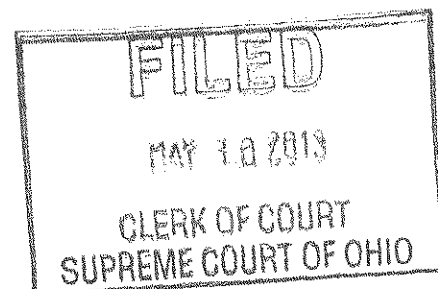
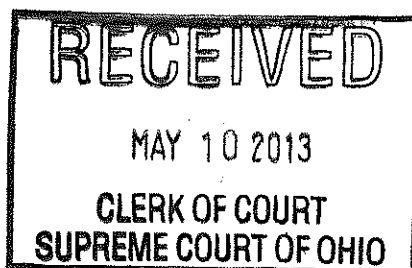
V.

VILLAGE OF ELMWOOD PLACE, et al.

HAMILTON COUNTY COMMON
PLEAS CASE NO: A1209235

AFFIDAVIT OF DISQUALIFICATION

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AFFIDAVIT OF DISQUALIFICATION

STATE OF KENTUCKY)
) SS:
COUNTY OF KENTON)

Comes now Affiant, Judd R. Uhl, Esq., who being first duly cautioned and sworn, hereby states the following:

1. That I am Judd R. Uhl, Esq., counsel for Village of Elmwood Place, Ohio (“Elmwood Place”), and William Peskin, Chief of Police for Elmwood Place.

2. That the purpose of this Affidavit is to seek disqualification of The Honorable Judge Robert P. Ruehlman from acting on any further proceedings in Case No. A1209235 pending in the Court of Common Pleas, Hamilton County, Ohio, wherein Elmwood Place and Chief Peskin are Defendants.

3. Elmwood Place was and is a political subdivision of the State of Ohio, in accordance with R.C. 2744.01(F). Chief Peskin is the duly appointed and acting Police Chief for the municipality.

4. The Hon. Robert P. Ruehlman was and is a judge presiding on the Hamilton County Court of Common Pleas.

5. Like many other towns and cities throughout Ohio, Elmwood Place formulated and enacted an automated speed enforcement ordinance designed to enforce the existing traffic ordinances through automated photographic equipment. Digital images of suspected violations are carefully examined by police officers before civil citations are issued, and a full and fair administrative review procedure has been furnished.

6. Since the automated speed enforcement ordinances went into operation in September 2012, public safety has been enhanced by the identification of over 100 speeding violations per day within the Village limits. See attached Affidavit of William Peskin, paragraph

2, attached as *Exhibit A*. Elmwood Place has also received substantial revenues from the citations that have been issued to the offenders, which fund a number of important services and benefits to the community. *Id.*, paragraph 2.

7. Approximately two months later on November 27, 2012, Elmwood Place and Chief Peskin were named as the only Defendants in a civil lawsuit that was filed on behalf of Gary Pruiett and others in the Hamilton County Court of Common Pleas and docketed under Case No. A1209235 (“Pruett lawsuit”). Judge Ruehlman as the then sitting equity judge when the case was filed was assigned to preside over the action.

8. The objective of the Pruiett lawsuit is a judicial determination that Elmwood Place’s automated speed enforcement ordinances violate the Ohio Constitution. A copy of the Complaint (without Exhibits) is attached as *Exhibit B*.

9. Ohio law has long recognized that legislative enactments enjoy a strong presumption of constitutionality. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 473, 2007-Ohio-6948, 880 N.E.2d 420, 473, ¶ 25; *Ruther v. Kaiser*, 134 Ohio St.3d 408, 410, 2012-Ohio-5686, 983 N.E.2d 291, 294, ¶ 9.

10. This Court has previously determined that municipalities possess the constitutional authority to enact civil traffic camera enforcement ordinances. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. Due process challenges to such enactments have also been rejected. *Mendenhall v. Akron*, 374 Fed. Appx. 598, 2010 W.L. 1172474 (6th Cir. 2010); *Gardner v. Cleveland*, 656 F. Supp. 2d 751 (N.D. Ohio 2009); *Valaban v. Cleveland*, U.S. Dist., N.D. Ohio, Case No. 1:07-CV-1366, 2010 W.L. 481283 (Feb. 5, 2010).

11. Nevertheless, Judge Ruehlman determined in a six-page decision dated March 7, 2013, that Elmwood’s traffic camera enforcement system violates “due process guarantees” without citing to any specific Articles of the Ohio or United States Constitution . *Exhibit C*,

attached. Other than two U.S. Supreme Court decisions addressing federal due process requirements in general, no judicial authorities were cited in support of this determination. *Id.*

12. Furthermore, Judge Ruehlman imposed final “Judgment” in favor of the Pruiett Plaintiffs and court costs were imposed. *Exhibit C, p. 6*. Citing no authorities, Respondent further directed that “other reasonable expenses and attorney fees are to be assessed against the Defendants.” *Id., p. 6*.

13. In an earlier January 9th, 2013 evidentiary hearing, Judge Ruehlman asked questions of witnesses directly from the bench.

14. Chau M. Pham was a testifying witness on January 9, 2013. Mr. Pham had emigrated from Vietnam to the United States in 1975.

15. Judge Ruehlman asked Mr. Pham whether he was accurately summarizing Mr. Pham’s testimony by comparing to Elmwood’s Automated Speed Enforcement program to Communist North Vietnam in the 1970’s:

THE COURT: Okay. So you’re saying, summarizing, you’re saying your congregation, many of them stayed after the fall, like March of ’75?

THE WITNESS: March of ’75, Saigon.

THE COURT: The North Vietnamese attacked and took over South Vietnam.

THE WITNESS: Yeah.

THE COURT: And changed the name to Ho Chi Minh, of course, a lot of Vietnamese stuck there in the south.

THE WITNESS: Yes.

THE COURT: And so they lived under Communist regime for a number years and you’re saying they compared this - - they didn’t like - - the secret police was watching always on cameras and they were always being watched by government and that’s what they are comparing this to.

THE WITNESS: Yeah.

THE COURT: - - and it just bothers them, is that what you are saying? Just to summarize?

THE WITNESS: Yeah. And also there's another thought maybe we are facing to where prejudice or because all cam nearby the church (*sic*).

(January 9th, 2012 pp. 10-11) attached as *Exhibit D*.

16. Judge Ruehlman also asked Mr. Pham whether he believed the program was a form of discrimination against Vietnamese people. *Id.*

17. At another hearing on March 12th, 2013 (after Judge Ruehlman had already ruled that Elmwood's ordinance was unconstitutional), Judge Ruehlman stated that Elmwood's conduct was "outrageous" and that if (Elmwood) violates my Order, "it's going to be a chauffer service to the Justice Center." (See March 12th, 2013, hearing, p. 16, attached as *Exhibit E*)

18. In addition to the comments and questions from the bench, in his actual written 6-page opinion granting Plaintiff's Motion, Judge Ruehlman used extremely pejorative and unnecessary language directed at Elmwood Place and Chief Peskin, e.g. "sham!" "game" "nothing more than a high-tech game of **3 CARD MONTY**" "scam" "entire case against the motorist is stacked" and "Elmwood Place has another scheme up its sleeve".

19. Judge Ruehlman has ordered that: "A permanent injunction is granted to the Plaintiffs prohibiting further enforcement of the ordinance, by the Defendants." *Id.*, p. 6.

20. That prior to the trial court's injunction prohibiting enforcement of Elmwood Place's ordinances, the speed cameras were generating approximately one hundred three (103) Notices of Liability each day at \$105.00 per violation. This represents potential lost revenues to Elmwood Place of almost \$325,000.00 per month. Elmwood Place has a population of approximately 2200 residents. *Exhibit A, paragraph 2, attached.*

21. Nevertheless, Judge Ruehlman ignored the clear and substantial harm to Elmwood Place that would be caused by the injunction and rather than addressing it in a fair and impartial manner, ordered that the surety be set at the nominal amount of \$1.00.

22. That since the trial court's injunction, Chief Peskin has observed that a high percentage of motorists have returned to traveling at excessive and unlawful rates of speed while traveling through Elmwood Place on the previously monitored roadways, including the school zone on Vine Street across from Elmwood Place Elementary School. *Id.*, paragraph 3.

23. That Judge Ruehlman's injunction has created a material safety concern with the traffic situation and Elmwood Place does not have sufficient police manpower to adequately patrol the areas previously monitored by the speed cameras. *Id.*, paragraph 4.

24. That Judge Ruehlman's words and actions create an overwhelming appearance of bias and prejudice toward Elmwood Place and Chief Peskin and convey the impression that the Judge has developed a hostile feeling or spirit of ill will and that the Judge has reached a fixed anticipatory judgment that will prevent him from hearing the balance of the case with an open state of mind governed by the law and the facts.

25. The Pruiett Plaintiffs have currently pending a Motion for Leave to File First Amended Class Action Complaint and Motion for Contempt, which are the subject of the next scheduled hearing in the proceeding set for 2:00pm on June 4, 2013.

26. Elmwood Place and Chief Peskin harbor serious doubts about the judge's impartiality.